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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,215	07/24/2006	Martin Mastenbrock	2005-1037	9728
466 7590 06/29/2011 YOUNG & THOMPSON 209 Madison Street Suite 500 Alexandria, VA 22314			EXAMINER QUINN, COLLEEN M	
			ART UNIT 3634	PAPER NUMBER
			NOTIFICATION DATE 06/29/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/584,215

Applicant(s)

MASTENBROEK, MARTIN

Examiner

COLLEEN M. QUINN

Art Unit

3634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 June 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: 47-51
Claim(s) rejected: 38-43, 45 and 46
Claim(s) withdrawn from consideration: 44 and 52-57

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Katherine Mitchell/
Supervisory Patent Examiner, Art Unit 3634

/COLLEEN M QUINN/
Examiner, Art Unit 3634

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: The applicants' arguments are not persuasive.

The applicant first argues that the flexible fastening flap (9), as rejected in the Final Office Action of 4/1/11, is not "locally bonded" to the surface in a manner that leaves the surface puncture free. From <http://www.thefreedictionary.com/bonded>:

bond (b nd)

n.

1. Something, such as a fetter, cord, or band, that binds, ties, or fastens things together.

2. Confinement in prison; captivity. Often used in the plural.

3. A uniting force or tie; a link; the familial bond.

4. A binding agreement; a covenant.

5. A duty, promise, or other obligation by which one is bound.

- 6.

- a. A substance or agent that causes two or more objects or parts to cohere.

- b. The union or cohesion brought about by such a substance or agent.

7. A chemical bond.

8. A systematically overlapping or alternating arrangement of bricks or stones in a wall, designed to increase strength and stability.

fasten (f s n)

v. fastened, fasten·ing, fastens

v.tr.

1. To attach firmly to something else, as by pinning or nailing.

- 2.

- a. To make fast or secure.

- b. To close, as by fixing firmly in place.

3. To fix or direct steadily: fastened her gaze on the stranger.

4. To place; attribute: fastened the blame on the weather.

5. To impose (oneself) without welcome.

v.intr.

1. To become attached, fixed, or joined.

First, examiner notes the term "locally bonded" does not appear in the original application, but it was not considered new matter as examiner considered bonded broadly as meaning fastened. Any narrower definition would be new matter. The applicants arguments are that the roofing material/cover that covers the flap and secures it to the exposed surfaces is a bulk roof material or gravel and does not constitute a physical bond between the flap and the surface. However this is not persuasive since Zink clearly discloses that the "load from the bulk material and the teeth of the bulk material with the mesh as well as the soft fiber protection matt and/or drainage element as support lead to a resistance against the withdrawal" clearly demonstrating that there is a bond that holds the flap to the surface and prevents it from being pulled away.

The applicant also argues some features of Zink, for example the gravel or bulk material covering, and the size of the mesh and weight of the system, and how they differ from the applicant's invention. However, these arguments are directed to subject matter not currently claimed and are therefore moot. Currently the applicant is not claiming mesh size, weight features or specific coverings or lack thereof and so the arguments to these points are not persuasive.

Therefore, for at least these reasons the applicant's arguments are not found persuasive and the indicated claims are still rejected, objected to and withdrawn as noted above.